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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/750,439 | 12/31/2003 | Christopher M. Meck | ZIM0400 | 1791 |

7590 01/08/2007
John F. Hoffman, Esq.
BAKER & DANIELS LLP
Suite 800
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Fort Wayne, IN 46802

EXAMINER

GEORGE, TARA R

ART UNIT PAPER NUMBER

3733

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/08/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/750,439 | Applicant(s) MEEK, CHRISTOPHER M. | |
| | Examiner Tara R. George | Art Unit 3733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire et al. (US Pat. 5,797,918) in view of Slamin (US Pat. 5,879,391).

McGuire discloses a driver comprising a shaft having a fastener engaging end, a driven end, and a shaft axis therebetween (see col. 3 lines 35-37). The shaft can have an intermediate portion between the fastener engaging end and the driven end, a first bend axially spaced a first distance from the fastener engaging end, a second bend offset radially from the shaft axis a second distance, and a third bend axially spaced a

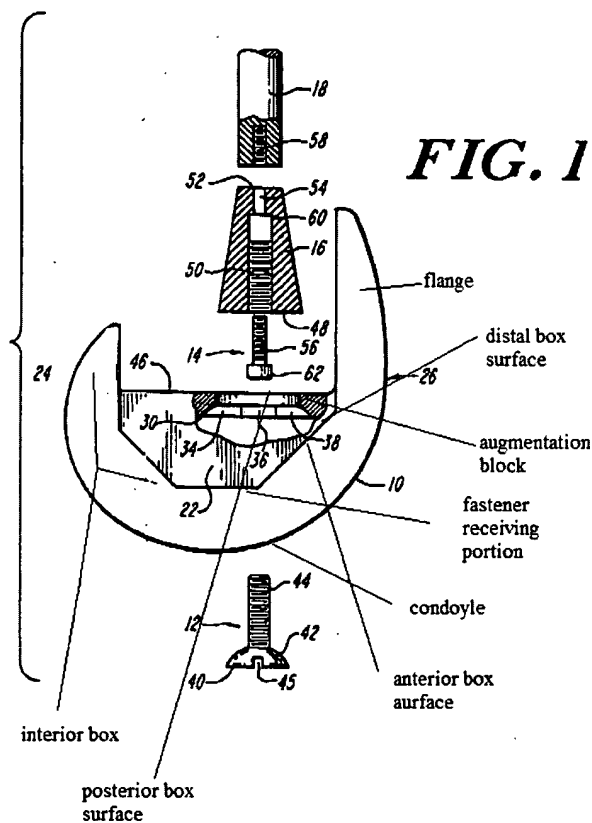
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third distance from the fastener engaging end (see col. 3 lines 25-57 and col. 11 lines 54-64).

McGuire discloses the claimed invention except for the knee joint implant having a patellar flange, a distal condyle, a posterior condyle, an interior box area, an anterior box surface, a distal box for receiving a fastener, and a posterior box surface for receiving a fastener, wherein said flange has a patellar flange height less than or equal to said second distance, and said first distance is greater than or equal to a posterior condyle height. Slamin discloses a knee joint implant (see Figure 1 below) having a patellar flange (see Figure 1 below), a distal condyle 20 (see col. 3 line 7), a posterior condyle 20 (see col. 3 line 7), an interior box area (see Figure 1 below and col. 3 lines 5-20), an anterior box surface (see Figure 1 below), a distal box for receiving a fastener (see Figure 1 below), and a posterior box surface for receiving a fastener (see Figure 1 below and col. 3 lines 35-55), wherein said flange has a patellar flange height less than or equal to said second distance, and said first distance is greater than or equal to a posterior condyle height. It would have been obvious to one skilled in the art at the time the invention was made to construct the driver of McGuire for use with the knee joint implant having a patellar flange, a distal condyle, a posterior condyle, an interior box area, an anterior box surface, a distal box for receiving a fastener, and a posterior box surface for receiving a fastener, wherein said flange has a patellar flange height less than or equal to said second distance, and said first distance is greater than or equal to a posterior condyle height in view of Slamin in order to provide a device that is flexible enough to adapt to the limited space constraints while implanting a knee

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prosthesis. With regards to claim 7, please note that the shaft disclosed by McGuire is capable of performing the bends required to obtain the first and second distances, and it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. With regards to claim 11, please note that the structural elements of the implant clearly dictate how the implant is to be implanted.



Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art of cited interest.

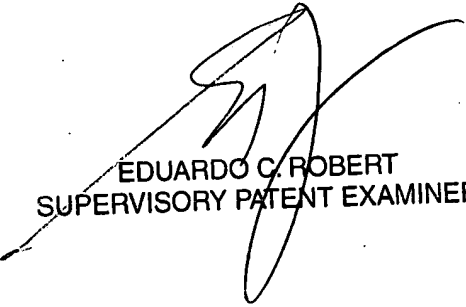
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Any inquiry concerning this communication should be directed to Tara George whose telephone number is 571-272-3402. The examiner can normally be reached on M-F 8am-5pm. If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions about access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

THG

TRG



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER